

These are the tentative rulings for civil law and motion matters set for Tuesday, November 26, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, November 25, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. S-CV-0028179 Burrill, Janelle vs. Nair, Jayraj**

Plaintiff's Motion to Quash Request for Consumer Records to Board of Behavioral Sciences, and Motion to Quash Request for Production of Consumer Records to Department of Consumer Affairs, are continued to December 3, 2013 at 8:30 a.m. in Department 32, to be heard by the Honorable Mark S. Curry.

**2. S-CV-0028737 Hopkins, Toni Lee vs. Cayton-Sutherland, Robin D., et al**

Defendants' Motion to Compel Mental Examination of Plaintiff is denied. Defendants have established good cause for the requested mental examination based on the allegations made by plaintiff in this litigation. Code Civ. Proc. § 2032.320(a). Defendants have also satisfied Code of Civil Procedure section 2032.320(e)(2) by agreeing to advance reasonable expenses and costs to plaintiff for travel to the place of examination. However, defendants offer no justification for why plaintiff should be required to travel approximately 100 miles to attend the examination, and therefore fail to establish good cause for requiring plaintiff to travel more than 75 miles from her residence to be examined. Code Civ. Proc. § 2032.320(e)(1).

If oral argument is requested, plaintiff's request for telephonic appearance is granted. All telephonic appearances must be arranged through CourtCall pursuant to Local Rule 20.8.A.2.

**3. S-CV-0028791 Dial, Leanne, et al vs. John Mourier Construction, et al**

Plaintiffs' Motion for Order Directing Service on Toliver Plastering, Inc. by Secretary of State is granted. Plaintiffs may serve the summons and complaint in this action on Toliver Plastering, Inc. by personally delivering the same to the Secretary of State of California, or to an assistant or deputy secretary of state.

If oral argument is requested, plaintiffs' request for telephonic appearance is granted. All telephonic appearances must be arranged through CourtCall pursuant to Local Rule 20.8.A.2.

**4. S-CV-0031387 Cope, Foster Bud, et al vs. William L. Lyon & Assoc., et al**

Defendant William L. Lyon & Associates, Inc. dba Lyon Real Estate's ("Lyon's") Motion to Compel Responses to Interrogatories and Requests for Production, for Production of Documents and for Deemed Admissions is granted. Plaintiffs shall serve verified responses, without objections, to Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Production of Documents, Set One, and shall produce documents responsive to Request for Production of Documents, Set One, by no later than December 17, 2013. Lyon's Request for Admissions, Set One, are deemed admitted.

Lyon is awarded sanctions from plaintiffs and their counsel, jointly and severally, in the amount of \$560. Code Civ. Proc. § 2033.290(d). To the extent sanctions are requested in connection with the motion to compel responses to form and special interrogatories and requests for production of documents, the request is denied because the motion was not opposed. Although California Rules of Court, rule 3.1348(a) purports to authorize sanctions if a motion is unopposed, the court declines to do so, as the specific statute governing this discovery authorizes sanctions only if the motion was unsuccessfully made or opposed. *See* Code Civ. Proc. §§ 2030.290(c), 2031.300(c). Any order imposing sanctions under the California Rules of Court must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmaterr Inc.* (1997) 60 Cal.App.4th 352, 355.

**5. S-CV-0032239 Rymel, Lacy R. vs. Croisant, David, et al**

The Petition to Compromise Minor's Disputed Claim is granted. If oral argument is requested, appearance of the minor at the hearing is excused.

**6. S-CV-0032859 Reeve-Knight Construction, Inc. vs. Airco Mechanical, et al**

Plaintiff's Motion for Order Consolidating Actions is granted. Placer County Superior Court Case No. SCV-32859 shall be consolidated with Placer County Superior Court Case No. SCV-33106. Case No. SCV-32859 shall be the lead case. Cal. R. Ct., rule 3.350(b).

**7. S-CV-0032865 Acocks, Michael, et al vs. Ford Motor Company**

Plaintiffs' Motion to Compel the Deposition of Ford Motor Company's Person(s) Most Knowledgeable and Defendant's Motion to Compel Depositions of Plaintiffs and Production of Documents are continued to December 10, 2013 at 8:30 a.m. in Department 40.

The court notes that in opposition to the motions, neither plaintiffs nor defendant articulate any objection to the subject depositions going forward. Instead, both sides accuse the other of gamesmanship in failing to provide dates of availability, and neither side appears wholly blameless for the current impasse. Counsel for plaintiffs and defendant are instructed to meet and confer at least five days prior to the continued hearing date, either in person or by telephone,

regarding available dates for scheduling of the depositions at issue. If agreement is reached between the parties which renders either or both motions moot, the parties are encouraged to contact the court as soon as practicable to take the motion(s) off calendar.

**8. S-CV-0032871 Degrinis, James vs. Ford Motor Company**

Defendant's Motion to Strike

Defendant's request for judicial notice is granted as to Exhibit A, and denied as to Exhibits B-F. Defendant's Motion to Strike is denied.

The definition of the duration of the implied warranty of merchantability in the Song-Beverly Consumer Warranty Act does not bar an action for breach of that warranty when the action is based upon a latent condition that is not discovered by the consumer and reported to the seller within the duration period. *Mexia v. Rinker Boat Co.* (2009) 174 Cal.App.4th 1297, 1309. *Mexia* has not been disagreed with or overruled by any subsequent California appellate decision, and remains good law. Accordingly, plaintiff's allegations regarding breach of the implied warranty under the Song-Beverly Act will not be stricken.

Plaintiff also adequately alleges tolling of the statute of limitations based on the filing of a federal class action of which plaintiff was a member. *San Francisco Unified School Dist. v. W.R. Grace & Co.* (1995) 37 Cal.App.4th 1318, 1340 (plaintiff who opts out of federal class action is entitled to have limitations period tolled during the time when it was a member of the class).

The motion to strike is also denied as to purported sham amendments in the second amended complaint. In the first amended complaint, plaintiff alleges that "shortly after" the last repair under the terms of the written warranty, plaintiff discovered that defendant had been given a reasonable number of repair attempts and was still unable to repair the problems under the warranty. (FAC, ¶ 33.) In the second amended complaint, plaintiff alleges that he could not have discovered his claim until October 17, 2011, the date that the vehicle first required another repair for "similar problems". (SAC, ¶ 39.) The allegation stated in the second amended complaint is not necessarily contradictory so as to constitute a sham amendment. Further, an allegation that defendant intended to induce plaintiff to enter the sale contract (FAC, ¶ 32) does not make the allegation that defendant intended plaintiff to rely on alleged misrepresentations "to conceal the fact that the truck's engine could not be repaired" (SAC, ¶ 37) a sham amendment.

Defendant's Demurrer to Second Amended Complaint

Defendant's request for judicial notice is granted as to Exhibit A, and denied as to Exhibits B-E. Defendant's Demurrer to Causes of Action One Through Four is overruled.

Defendant argues that the economic loss rule bars plaintiff's first, second and third causes of action. However, the economic loss rule does not preclude tort liability for affirmative fraudulent statements or concealment of material facts made during the course of a contract's performance if those statements carry with them the risk of harm to persons or other property.

*Robinson Helicopter, Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 989-990. Defendant also asserts that the statute of limitations bars plaintiff's first, second and third causes of action. The court finds that the second amended complaint adequately pleads facts to assert a tolling of applicable statute of limitations.

Finally, the fourth cause of action for violation of the CLRA adequately states a cause of action, as plaintiff alleges omissions of fact contrary to representations actually made by defendant, or which defendant was obligated to disclose. (SAC, ¶¶ 14, 31, 117, 124, 220-221.) *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824.

Defendant shall file and serve its answer to the second amended complaint by no later than December 10, 2013.

**9. S-CV-0033385 Murchison, Ola vs. Helman, Wilhelmina**

Defendant's Demurrer to Complaint is overruled without prejudice. There is no proof of service in the court's file establishing that the demurrer was properly served on plaintiff.

**10. S-CV-0033527 Alizadeh, Abolghassem et al vs. Unionbancal Mortgage et al**

The Demurrer to the Complaint is dropped as moot. A first amended complaint has been filed.

**11. S-CV-0033669 Lisotta, Frank, et al vs. Cook, Henry, et al**

The Petition to Compel Arbitration is granted.

California law favors enforcement of valid arbitration agreements. *Armendariz v. Foundation Health Psychcare Svcs., Inc.* (2000) 24 Cal.4th 83, 97. "[D]oubts as to the scope of an agreement to arbitrate are to be resolved in favor of arbitration." *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal.App.4th 227, 230. The court may refuse arbitration where a party to the arbitration agreement is involved with a third party if the litigation arises out of the same transaction and there is a possibility of conflicting rulings on common issues of law or fact. Code Civ. Proc. § 1281.2(c).

Petitioners initiated the instant action by a petition to compel arbitration. Respondents then filed a cross-complaint against the brokers and agents involved in the real estate purchase agreement that underlies petitioners' petition to compel arbitration, and contend that the filing of the cross-complaint provides sufficient basis for the court to refuse to compel arbitration. A cross-complaint may be filed by a party against whom a cause of action has been asserted in a complaint or cross-complaint. Code Civ. Proc. § 428.10. In this case, no complaint or cross-complaint has been filed, and no cause of action has been asserted against respondents. Thus, the cross-complaint appears to be improper and subject to being stricken.

Even if the cross-complaint was considered, the same result would obtain. Respondents assert without evidentiary support that the named cross-defendants have refused to participate in

arbitration. Respondents offer no factual basis for their conclusion that conflicting rulings on common issues of law or fact are a possibility. As respondents fail to establish the potential for conflicting rulings of law or fact, the petition to compel arbitration is granted. The parties are instructed to meet and confer regarding the selection of an acceptable arbitrator.

On its own motion, the court orders respondents to appear and show cause regarding whether the cross-complaint should be stricken pursuant to Code of Civil Procedure section 436, as not being drawn or filed in conformity with the laws of this state. **This order to show cause shall be heard on January 8, 2013 at 11:30 a.m. in Department 40.**

**12. S-PR-0006905 Sepahpour, Houtan - In Re the Estate of**

The Application for Order Directing Production of Attorney Ramin Mozaffar's File is denied. Although moving party's showing is sufficient to demonstrate waiver of any attorney-client privilege between Anahita Mowlaei and attorney Ramin Mozaffar ("Attorney"), moving party does not establish that Attorney has refused to comply with a duly served subpoena duces tecum or other formal discovery request. At most, moving party sets forth an informal request which has purportedly been ignored by Attorney. Moving party provides no authority for the court to compel production absent proper service of a valid discovery request.

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